

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)	SUMMARY OF FACTS
Against Dave Galt, Director,)	AND
Montana Department of)	STATEMENT OF FINDINGS
Transportation)	

Ryan Seher, Campaign Manager for the Tracy Valazquez for Congress Campaign, filed a complaint against Dave Galt (Galt), Director of the Montana Department of Transportation (MDT) on June 29, 2004. Tracy Valazquez (Valazquez) is the Democratic Party's candidate for the United States House seat currently held by Republican Dennis Rehberg. The Valazquez campaign alleges that:

1. Galt violated Section 13-35-226(4), Montana Code Annotated (MCA), by writing a letter to the editor that was published in at least two Montana daily newspapers. The Valazquez campaign alleges that Galt's letter to the editor constitutes support for the candidacy of Representative Rehberg and opposition to the candidacy of Valazquez and that Galt's expression of support for or opposition to a candidate violates Section 13-35-226(4), MCA..

2. Galt violated Section 13-35-226(3), MCA, because his letter to the editor was an attempt to coerce employees of the Montana Department of Transportation to support Congressman Rehberg and oppose Valazquez's candidacy.

SUMMARY OF FACTS

1. Section 13-35-226(4), MCA, provides that a "public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the place

of employment." This section of law also specifies that, subject to Section 2-2-121, MCA, the prohibition in 13-35-226(4) "does not restrict the right of a public employee to express personal political views."

2. The Valazquez campaign's complaint cited the language in 13-35-226(4), MCA, prohibiting a public employee from soliciting support for or opposition to a candidate but omitted the qualifying language limiting the prohibition to political solicitation that occurs "on the job or at the place of employment." The Valazquez complaint also omitted any reference to the language in Section 13-35-226(4), MCA, stating that the prohibitions in the law do not restrict a public employee's right to "express personal political views."

3. Section 13-35-226(3), MCA, provides that a "person may not coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue."

4. Galt has served as Director of MDT since January of 2001. Galt was appointed to serve as MDT Director by Republican Governor Judy Martz and was subject to Senate confirmation as provided in Sections 2-15-111 and 2-15-2501, MCA.

5. As MDT Director, Galt supervises hundreds of state employees. The Valazquez campaign alleges in the complaint that Galt supervises 1,500 employees statewide.

6. Galt used his personal computer in his home to write a letter to the editor on June 15, 2004. The letter praised the efforts of Congressman Rehberg in obtaining highway funds for Montana and rebuked Velazquez for issuing a press release stating

Rehberg had done nothing for Montana. Galt's letter gave Congressman Rehberg credit for securing passage of the recent transportation bill in the United States House of Representatives and noted that Rehberg was appointed to the conference committee on the bill (both events were the subject of extensive news stories in Montana's print, radio and television news). The letter also categorized Valazquez's criticism of Rehberg as "fly dung." Galt stated that he "would much rather have Dennis Rehberg working for Montana than a 10-year Montana resident who has a hard time recognizing good pepper." Galt asked his wife to read the letter before he transmitted it to anyone.

7. Galt emailed the letter to the *Missoulian* and the *Helena Independent Record* on June 15, 2004. The letter was emailed from Mr. Galt's home email address and was accompanied by a cover letter in which he listed his home street address. Galt also listed his home and daytime phone numbers in the cover letter. The daytime phone number provided by Galt was his telephone number at MDT. Galt's cover letter asked the *Missoulian* and the *Helena Independent Record* to print the letter to the editor.

8. Galt mailed the letter to the editor to the *Billings Gazette* and the *Great Falls Tribune* on June 16, 2004. Galt printed two copies of the letter to the editor on plain white paper on his home printer. The letters were mailed to the *Gazette* and the *Tribune* in plain envelopes. Mr. Galt used personal stamps to mail the letters and personally dropped the envelopes off at the post office on his way to work on June 16, 2004.

9. The *Missoulian* did not print Galt's letter; however, the *Missoulian* confirmed that Galt's letter was printed on plain white paper and not on MDT stationery. The *Missoulian* also confirmed that Galt's letter was emailed from his home computer.

10. The *Tribune* printed Galt's letter as a letter to the editor on June 25, 2004. The *Tribune* confirmed that Galt's letter was printed on plain white paper and not on MDT stationery. Before printing Galt's letter, the *Tribune* did call Galt at his home phone number to confirm that he had written the letter.

11. The *Gazette* chose not to print Galt's letter; however, the *Gazette* confirmed that Galt's letter was printed on plain white paper and not MDT stationery.

12. The *Independent Record* printed Galt's letter as a "Your Turn" op-ed piece on June 25, 2004. The *Independent Record* changed the title of Mr. Galt's letter to the editor and added a tag line stating that "Mr. Galt heads the state Department of Transportation." Galt did not identify himself as the MDT Director in the letter nor did Galt request that such an identifying line be added. The only statement made by Galt in his letter was that he had been involved in state transportation issues for 30 years and had served in key transportation positions in Montana since 1989. The *Independent Record* confirmed that Galt's letter was written on plain white paper and not MDT stationery.

13. Lorelle DeMont (DeMont) works in Galt's office and serves as MDT's Information Specialist. She is responsible for preparing final letters and other communications issued by the MDT Director. Galt did not ask her to type or work on the letter to the editor at issue in this proceeding. DeMont did not review or work on the letter to the editor sent to the newspapers by Galt. DeMont saw no evidence that Galt worked on the letter to the editor at his MDT office or while at work.

14. Lisa Vander Heiden (Vander Heiden) is MDT's Public Information Officer. She writes most of the MDT communications issued by MDT and Director Galt. Galt did

not ask her to write or work on the letter to the editor at issue in this proceeding. Vander Heiden did not review or work on the letter to the editor sent to the newspapers by Galt. Vander Heiden saw no evidence that Galt worked on the letter to the editor at his MDT office or while at work.

STATEMENT OF FINDINGS

A. Soliciting Support for or Opposition to a Candidate

While on the Job or at the Place of Employment (13-35-226(4), MCA)

The Valazquez campaign complaint misstates and misrepresents the conduct prohibited by Section 13-35-226(4), MCA. This provision of Montana's Campaign Finance and Practices Act is not an absolute prohibition against a state employee soliciting support for or opposition to a candidate or ballot issue. Section 13-35-226(4), MCA, only prohibits a state employee from soliciting support for or opposition to a candidate or a ballot issue "while on the job or at the place of employment." The last sentence of Section 13-35-226(4), MCA, specifies that a public employee has the right to "express personal political views" subject to certain restrictions in Section 2-2-121, MCA. The Valazquez campaign ignored the plain language of Section 13-35-226(4), MCA, and alleged that Galt, as a state employee, is prevented from soliciting support for or opposition to a candidate at all times, even if at home, on the weekends or on vacation.

Galt can only be found to have engaged in misconduct under 13-35-226(4), MCA, if his letter to the editor was a solicitation of support for Congressmen Rehberg or opposition to Valazquez AND the letter was written while Galt was on the job or at the MDT offices. Even if Galt's letter to the editor can be deemed a solicitation of support

for or opposition to a candidate, there is no evidence that Galt wrote the letter at his MDT office or while on the job. All of the evidence substantiates that Galt's letter to the editor was written after working hours on his home computer, printed on plain white paper on Mr. Galt's home printer, and emailed to the *Missoulian* and the *Independent Record* from his home computer. The copies of the Galt letter mailed to the *Gazette* and the *Tribune* were also printed on Galt's home printer and mailed in envelopes with stamps provided by Galt. Galt personally mailed the letters by dropping them off at the post office on his way to work. Galt did not use MDT equipment, supplies, office space or personnel to prepare, perfect or distribute his letter to the editor.

Based on the preceding, it is not necessary to determine whether Galt's letter to the editor constituted a solicitation of support for or opposition to a candidate or was merely an expression of a personal political opinion authorized by 13-35-226(4), MCA; however, it is necessary briefly to address the issue of whether Galt is a "public employee" subject to the prohibitions of 13-35-226(4), MCA.

The term "public employee" is not defined in Montana's Campaign Finance and Practices Act. The term is defined in Montana's Code of Ethics, Section 2-2-101, et seq., MCA. In addition, the Code of Ethics defines the terms "public officer" and "state officer," and often imposes differing ethical standards for public employees, public officers, state officers and legislators. Montana's rules of statutory construction provide that when "the meaning of a word or phrase is defined in any part of this code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears." Section 1-2-107, MCA; and Dept. of Revenue v. Gallatin Outpatient Clinic, 234 Mont. 425, 430, 763 P. 2d 1128(1988).

Although the definition of "public employee" in Section 2-2-102(7)(a), MCA, is arguably broad enough to include MDT's Director within the definition (a public employee includes any "temporary or permanent employee of the state"), the Ethics Code also unequivocally classifies a director of a state executive branch agency as a "state officer" (a state officer is also a public officer" under the Ethics Code). Section 2-2-121(3)(a), MCA, of the Ethics Code contains a provision similar to Section 13-35-226(4), MCA, but the 2-2-121(3)(a) language expressly applies to both a public employee and a public officer.¹ Applying the distinct definitions of the Ethics Code to Section 13-35-226(4), MCA, raises the legal question of whether a director of an executive branch agency is a public employee under the Campaign Finance and Practices Act. I urge the Montana Legislature to resolve this legal issue and eliminate any ambiguities in the definitions of the Ethics Code and the Campaign Finance and Practices Act.²

B. Coercing Public Employees to Support or Oppose

Candidates (13-35-226(3), MCA)

Section 13-35-226(4), MCA, provides that a person, which includes Galt (see Section 13-1-101(19), MCA) "may not coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue." The Valazquez campaign alleges that

¹ The Valazquez campaign also alleged that Galt violated Section 2-2-121(3)(a), MCA, of Montana's Code of Ethics. The alleged Ethics Code violation is addressed in an Order of Dismissal issued simultaneously with this decision.

² The Montana Legislature did respond to my May 11, 2000 decision *In the Matter of the Complaint Against Dennis Paxinos, Yellowstone County Attorney*, by amending the definitions of the Ethics Code to clarify that elected local government officials are "public officers" under the Code. See Chapter 122, 2001 Laws of Montana.

Galt's letter to the editor "has an inherent coercive effect on the more than 1,500 subordinate employees at MDT in violation of 13-35-226(3), MCA."

Webster's II New College Dictionary (1995 Edition) defines the term "coerce" to mean "to force to act or think in a given way by pressure, threats or intimidation: COMPEL." *Webster's* also defines "coerce" to mean "dominate or restrain forcibly" or "to bring about by force." An objective and unbiased reading of Galt's letter reveals the total absence of any words that can be construed as pressuring, threatening, forcing, intimidating or requiring MDT employees to vote for Rehberg or against Valazquez.

Galt's letter expresses his personal support for Congressman Rehberg's efforts to obtain more money for construction of highways in Montana and his personal criticism of Valazquez for asserting that Rehberg is not doing enough for Montana. Galt did not identify himself as MDT's Director in the letter nor is there any reference to MDT. The *Independent Record* did add a tag line to Galt's letter identifying him as MDT's Director, but that was an addition made by the newspaper. Galt did not ask the newspapers that received his letter to run it as an op-ed piece and only the *Independent Record* decided to run the letter as a "Your Turn" opinion (the *Tribune* ran Galt's letter in its letters to the editor space). Galt has no control over the editorial decisions made by the *Independent Record* or any other newspaper.

Nothing in Galt's letter remotely suggests that MDT's employees have to fear for their jobs or advancement if they choose to support Valazquez or oppose Congressman Rehberg. The language of Galt's letter is devoid of any hint of force, intimidation or threats to the employees of MDT. Montana law expressly allows MDT Directors and all public employees to express personal opinions of support for or opposition to

candidates. See Sections 13-35-226(4) and 2-2-121(3)(c), MCA. Galt's letter to the editor does not violate Section 13-35-226(3), MCA.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings there is no evidence to conclude that Dave Galt, MDT Director, violated either Sections 13-35-226(4) or 13-35-226(3), MCA.

DATED this 26th day of July, 2004.

Linda L. Vaughey
Commissioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 26th day of July, 2004, the foregoing Summary of Facts and Statement of Findings was served on the parties hereto addressed to the parties as follows:

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